

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:

HEALTH DIAGNOSTIC LABORATORY INC. *et. al.*,

Debtors.

Chapter 11

Case No. 15-32919 (KRH)

(Jointly Administered)

**LATONYA S. MALLORY’S LIMITED OBJECTION TO MOTION FOR ORDER
PURSUANT TO 11 U.S.C. §§ 105 AND 502 AUTHORIZING THE LIQUIDATING
TRUSTEE TO ENTER INTO A PROPOSED AGREEMENT WITH THE UNITED
STATES DEPARTMENT OF JUSTICE CIVIL DIVISION, TO (I) ALLOW A
PREPETITION PROOF OF CLAIM, AND (II) AUTHORIZE THE LIMITED WAIVER
OF THE ATTORNEY-CLIENT PRIVILEGE, WORK PRODUCT PROTECTION, AND
ANY OTHER APPLICABLE EVIDENTIARY PRIVILEGES**

Latonya S. Mallory (“Mallory”) respectfully submits this limited objection to the Liquidating Trustee’s Motion for Order Pursuant to 11 U.S.C. §§ 105 and 502 Authorizing the Liquidating Trustee to Enter into a Proposed Agreement with the United States Department of Justice Civil Division, to (i) Allow a Prepetition Proof of Claim, and (ii) Authorize the Limited Waiver of the Attorney-Client Privilege, Work Product Protection, and Any Other Applicable Evidentiary Privileges (the “Motion”), and respectfully states as follows:

1. On March 9, 2017, the Liquidating Trustee filed his Motion seeking approval of a *proposed* agreement (the “Agreement”) between himself and the United States Department of Justice (the “DOJ”). *See* Docket No. 1766. The Motion did not contain a copy of the Agreement, and the Motion indicated that the *proposed* Agreement was subject to “terms in the form approved by DOJ” and further disclosed that the terms identified in the Motion were “not an exhaustive list of the terms in the Proposed Waiver Agreement.” Motion at ¶ 17, n.3.

2. The following morning, on March 10, the undersigned counsel for Mallory requested a copy of the proposed waiver agreement from the Trustee in light of the Trustee having scheduled a hearing on the Motion for March 23, 2017. The Trustee refused to provide Mallory with a copy of the Agreement, indicating that it would be filed when it was approved by the DOJ.

3. On March 15, and then again on March 20, counsel for Mallory inquired with the Trustee about the status and availability of the proposed Agreement for review and was informed that the DOJ was still reviewing the Agreement. As a result, Mallory has been unable to see the actual proposed Agreement or its terms that were not disclosed in the Motion.

4. Nevertheless, in good faith, Mallory circulated edits to the proposed order approving the Agreement clarifying the extent of the waiver and Mallory's ability to produce documents, answer interrogatory questions, testify in depositions and at trial, and use the materials in pleadings and as exhibits. Mallory also suggested that the order be made effective upon entry. The Trustee and the DOJ agreed to all of the proposed language requested by Mallory.

5. Mallory is in favor of the relief sought as described in the Motion as clarified in the revised proposed order agreed to by the parties, and stands ready to produce discovery in the *qui tam* action that she is currently prevented from doing by this Court's prior order protecting the debtor's purported privilege; however, Mallory was compelled to file this limited objection because the actual Agreement subject to the Motion that is set for hearing in just three days has yet to be provided to Mallory and other parties in interest.

6. Mallory's request for an extension to file an objection to a time that was just 24 hours after the Agreement was received by her for review was denied by the Trustee. Therefore,

Mallory objects to entry of an order on the Motion until she has been provided a copy of the Agreement, in final form, and a reasonable opportunity to review and consider it.

WHEREFORE, Latonya S. Mallory respectfully requests that the Court provide her a reasonable opportunity to review the Agreement, in final form, prior to the hearing, and allow any objections by Mallory to be heard at the hearing on the Motion in light of the Agreement having not been provided for review to date.

Dated: March 20, 2017

Respectfully submitted,

WHITEFORD, TAYLOR & PRESTON L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2017, I caused a copy of the foregoing Limited Objection to be served via first-class mail, postage prepaid or electronically via e-mail on the attached Service List in accordance with the Court's *Order Establishing Certain Post-Confirmation Notice, Case Management and Administrative Procedures* entered on June 29, 2016 (Docket No. 1261).

/s/ Michael E. Hastings

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